A **ISKANDAR MOHD NULI v. AMGENERAL INSURANCE BHD**

FEDERAL COURT, PUTRAJAYA
RICHARD MALANJUM CJ (SABAH & SARAWAK)
SURIYADI HALIM OMAR FCJ
RAMLY ALI FCJ
B AZIAH ALI FCJ
PRASAD SANDOSHAM ABRAHAM FCJ
[CIVIL APPLICATION NO: 02(f)-28-05-2016(W)]
12 JULY 2017

C ***INSURANCE:*** *Motor insurance – Liability of insurer – Passenger liability not covered under policy – Accident in Singapore involving Malaysian registered vehicle – Passenger obtained consent judgment in Singapore court – Whether insurer liable to satisfy judgment obtained in Singapore – Whether bound by law in Singapore which requires compulsory cover for passengers – Special arrangement between*
D *insurance companies with Motor Insurers' Bureau of Singapore ('MIB') – Whether MIB to satisfy judgment and claim indemnity from respondent – Whether special arrangement incorporated into contract of insurance*

CONTRACT: *Contract of insurance – Motor insurance – Liability of insurer – Passenger liability not covered under policy – Accident in Singapore involving*
E *Malaysian registered vehicle – Passenger obtained consent judgment in Singapore court – Singapore law requires compulsory cover for passengers – Special arrangement between insurance companies with Motor Insurers' Bureau of Singapore ('MIB') – Whether MIB to satisfy judgment and claim indemnity from respondent – Whether special arrangement incorporated into contract of insurance*
F *– Whether insurer liable to satisfy judgment obtained in Singapore*

The registered owner of a motorcar ('insured') took out a motor insurance policy ('policy') on the car with the respondent. The car was loaned to the appellant to drive into Singapore with his wife ('Zuraini') as a passenger. There, the car was involved in a road traffic accident with a crane truck and
G Zuraini suffered injuries, losses and damages. Zuraini instituted an action for negligence at the High Court of Singapore ('Singapore suit') against the appellant, as the driver of the car, and the driver of the crane truck. The appellant and Zuraini entered into a consent judgment in the Singapore suit, where the appellant was to pay Zuraini damages in the sum of RM473,000
H plus costs and disbursements, whilst the action against the crane driver was withdrawn. On the other hand, the respondent, at the High Court in Kuala Lumpur, sought declaratory relief, amongst others, a declaration that the respondent was not liable to satisfy any judgment or part thereof obtained in

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Singapore by Zuraini against the appellant. The High Court found that under the motor insurance policy between the respondent and the insured, the respondent was liable to satisfy the judgment obtained by Zuraini. On appeal to the Court of Appeal, the decision of the High Court was set aside. Hence, the present appeal premised on the questions of law, *inter alia*, whether pursuant to the special agreement (together with its annexures), a Malaysian insurer is liable to satisfy a judgment obtained by a victim of an accident involving a Malaysian registered vehicle in Singapore, even though the motor insurance policy issued by the Malaysian insurer does not cover passenger liability.

Held (dismissing appeal with costs)
Per Prasad Sandosham Abraham FCJ delivering the judgment of the court:

(1) The law in Singapore, after amendment, requires compulsory cover for passengers. With the voluminous flow of traffic between Malaysia and Singapore and the dichotomy of positions between Malaysia and Singapore with regards to the compulsory coverage for passengers' risk, the insurance companies, including the respondent, came into a special arrangement with the Motor Insurers' Bureau of Singapore ('MIB') to seemingly address this anomaly. (para 7)

(2) It is an attempt by insurance companies to financially and morally, as responsible corporate citizens, to perform a crucial function in coming to arrangements to satisfy judgments obtained by victims where there was no effective insurance cover. The rights and obligations of the respondent under this special arrangement were between the respondent and the MIB, and not with the insured *per se*. As such, if the consent judgment was not satisfied, then the MIB would satisfy the same and claim an indemnity from the respondent. The terms of the special agreement did not incorporate itself into the contract of insurance but remains a special arrangement between the respondent and the MIB. (paras 8 & 9)

(3) The propositions of law in this case with regards to the special arrangement and its clauses incorporating itself into the contract of insurance is the position in Singapore, whilst, the position in Malaysia remains that the contract of insurance is the binding document between the parties. Therefore, the special agreement remains, in essence, an arrangement for enforceability of an unsatisfied judgment against the insurance company in a situation where the contract of insurance does not provide cover. (para 10)

(4) The said policy did not cover passenger liability and hence, the passenger risk for Zuraini was excluded. In the circumstances, Zuraini, would be unable to enforce the consent judgment she had obtained against the respondent. Zuraini's only recourse was to rely on the special agreement and its terms *ie*, the agreement between the respective insurance companies including the respondent and the MIB. There was no question of the special agreement being interposed into the contract of insurance and to find otherwise would mean imposing liabilities on the respondent where no premiums were paid for by the insured. Therefore, the Court of Appeal had not committed any appealable error and the question posed was thus answered in the negative. (paras 6, 7, 11 & 12)

Bahasa Malaysia *Headnotes*

Pemilik berdaftar sebuah motokar ('pengambil insurans') mengambil satu polisi insurans motor ('polisi') atas kereta tersebut dengan responden. Kereta itu dipinjamkan kepada perayu untuk dipandu ke Singapura dengan isterinya ('Zuraini') sebagai penumpang. Di situ, kereta itu terlibat dalam kemalangan jalan raya dengan trak kren dan Zuraini mengalami kecederaan dan kerugian. Zuraini memulakan satu tindakan bagi kecuaian di Mahkamah Tinggi Singapura ('guaman Singapura') terhadap perayu, sebagai pemandu kereta, dan pemandu trak kren tersebut. Perayu dan Zuraini memasuki penghakiman persetujuan dalam guaman Singapura dan perayu perlu membayar Zuraini ganti rugi berjumlah RM473,000 berserta kos dan perbelanjaan tunai manakala tindakan terhadap pemandu kren ditarik balik. Sebaliknya, responden, di Mahkamah Tinggi di Kuala Lumpur, memohon relief deklarasi, antara lain, deklarasi bahawa responden tidak bertanggungan memenuhi apa-apa penghakiman atau sebahagian daripadanya yang diperoleh di Singapura oleh Zuraini terhadap perayu. Mahkamah Tinggi mendapati bahawa bawah polisi insurans motor antara responden dan pengambil insurans, responden bertanggungan untuk memenuhi penghakiman yang diperoleh Zuraini. Atas rayuan ke Mahkamah Rayuan, keputusan Mahkamah Tinggi diketepikan. Oleh itu, rayuan ini atas persoalan undang-undang, antara lain, sama ada berikutan perjanjian khas (bersama-sama dengan lampirannya), syarikat insurans Malaysia bertanggungan memenuhi penghakiman yang diperoleh mangsa kemalangan yang melibatkan kenderaan berdaftar Malaysia di Singapura, walaupun polisi insurans motor yang dikeluarkan oleh syarikat insurans Malaysia tidak melindungi liabiliti penumpang.

Diputuskan (menolak rayuan dengan kos)
Oleh Prasad Sandosham Abraham HMP menyampaikan penghakiman mahkamah:

(1) Undang-undang Singapura, selepas pindaan, mengkehendaki perlindungan wajib bagi penumpang. Dengan kadar aliran trafik yang tinggi antara Malaysia dan Singapura dan dikotomi kedudukan antara Malaysia dan Singapura berkaitan dengan perlindungan risiko bagi penumpang, syarikat-syarikat insurans, termasuk responden, memasuki perjanjian khas dengan Biro Syarikat Insurans Motor Singapura ('MIB') untuk menangani anomali ini.

(2) Syarikat-syarikat insurans cuba melaksanakan, secara kewangan dan moral, sebagai warga korporat, fungsi penting pengurusan untuk memenuhi penghakiman yang diperoleh mangsa apabila tiada perlindungan insurans yang efektif. Hak dan kewajipan responden bawah urusan khas ini adalah antara responden dan MIB, dan bukan dengan pengambil insurans. Oleh itu, jika penghakiman persetujuan tidak dipenuhi, MIB akan memenuhinya dan menuntut indemniti daripada responden. Terma-terma persetujuan khas tersebut tidak termasuk dalam kontrak insurans tetapi kekal sebagai urusan khas antara responden dan MIB.

(3) Saranan undang-undang dalam kes ini berkaitan dengan urusan khas dan klausa-klausanya yang termaktub dalam kontrak insurans adalah kedudukan di Singapura, manakala kedudukan di Malaysia kekal bahawa kontrak insurans adalah dokumen yang mengikat pihak-pihak. Dengan itu, perjanjian khas kekal, secara inti patinya, satu pengurusan bagi pelaksanaan penghakiman yang tidak dipenuhi terhadap syarikat insurans dalam situasi kontrak insurans tidak memperuntukkan perlindungan.

(4) Polisi tersebut tidak melindungi liabiliti penumpang dan oleh itu, risiko penumpang bagi Zuraini dikecualikan. Dalam keadaan tersebut, Zuraini tidak boleh menguatkuasakan perjanjian persetujuan yang diperolehinya terhadap responden. Satu-satunya penyelesaian bagi Zuraini adalah dengan bersandar pada perjanjian khas tersebut dan terma-termanya iaitu perjanjian antara syarikat-syarikat insurans masing-masing termasuk responden dan MIB. Tiada persoalan tentang perjanjian khas itu dimasukkan dalam kontrak insurans dan untuk membuat dapatan sebaliknya bermaksud mengenakan liabiliti atas responden apabila tiada premium dibayar baginya oleh pengambil insurans. Oleh itu, Mahkamah Rayuan tidak melakukan apa-apa kekhilafan yang boleh dirayu dan persoalan yang diajukan dijawab secara negatif.

A **Case(s) referred to:**

Bankers and Traders Insurance Company v. National Insurance Company Ltd [1985] 1 WLR 734 ***(refd)***

Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd [1995] 4 CLJ 283 FC ***(refd)***

New Zealand Insurance Co Ltd v. Sinnadorai [1969] 1 LNS 119 FC ***(refd)***

B *Pacific & Orient Insurance Co Bhd v. Motor Insurers' Bureau of Singapore [2013] 1 SLR 341* ***(refd)***

Tan Chik Ibrahim v. Safety Life & General Insurance Sdn Bhd [1986] 2 CLJ 428; [1986] CLJ (Rep) 263 SC ***(refd)***

For the appellant - Ariff Rozhan, William Lim & Johnson Lim; M/s Wajdi Mohamad

C *Yusri & Co*

For the respondent - WSW Davidson, Rueben Mathiavaranam, Lim Qi Si, Soh Jing Han & Ng Peng Ying; M/s Suflan T H Liew & Partners

[Editor's note: For the Court of Appeal judgment, please see AmGeneral Insurance Bhd v. Iskandar Mohd Nuli [2016] 2 CLJ 1 (affirmed).]

D *Reported by S Barathi*

JUDGMENT

Prasad Sandosham Abraham FCJ:

E **[1]** We heard the submissions of parties on 9 March 2017, of this appeal based on the questions of law framed, and we reserved our decision to a date to be fixed. We now append below our decision and grounds for the same.

[2] Background Facts

F (a) On 26 November 2010, the registered owner (Sharul) of a motorcar bearing Register No. WIG 42225 (the car) took out a motor insurance policy (the policy) on the car with the respondent herein for the period 26 November 2010 to 25 November 2011 (see "ikatan teras bersama (penghakiman", p. 14)

G (b) On 13 December 2010, Sharul loaned the car to the appellant (Iskandar bin Mohd Nuli the second defendant in the High Court) to drive into Singapore with his wife (Zuraini) as a passenger. The car was involved in a road traffic accident with a crane truck and Zuraini suffered injuries, loss and damage.

H (c) On 31 January 2013, Zuraini instituted an action for negligence in the High Court of Singapore (the Singapore suit) against the appellant as the driver of the car and also the driver of the crane truck.

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(d) The respondent was notified of the claim and instructed their Singapore solicitors Global Alliance Bhd (GLA) to enter an appearance for the appellant.

(e) On 27 September 2013, GLA wrote to the appellant that the policy did not cover passenger liability (see "ikatan teras dokumen vol 2, pp. 233-235).

The respondent also gave the appellant the option of appointing his own solicitors to take over the defence or for GLA to continue to defend the Singapore suit with all rights reserved. This was followed by two reminders dated 17 December 2013 and 20 December 2013.

(f) On 31 December 2013, the appellant wrote to GLA asserting that by law and through contractual obligations with the respondent, the appellant was covered under the policy and was entitled to legal representation.

(g) Meanwhile GLA continued to represent the appellant in the Singapore suit until 5 May 2015 when the solicitors appointed by the appellant took over the conduct of the appellant defence.

[3] At the High Court, the respondent had sought for declaratory relief, amongst others, a declaration that the respondent is not liable to satisfy any judgment or part thereof obtained in Singapore by Zuraini against the appellant. On 28 November 2014 the High Court found that, under the motor insurance policy between the respondent and Sharul, the respondent is liable to satisfy any such judgment obtained by Zuraini. The respondent appealed to the Court of Appeal. On 16 December 2015 the Court of Appeal allowed the respondent's appeal and set aside the decision of the High Court.

[4] The present status of the Singapore suit, on query made to counsel, was that the appellant and his wife Zuraini had on 12 May 2016 entered into a consent judgment whereupon the appellant was to pay Zuraini damages in the sum of RM473,000 plus costs and disbursements. The action against the crane truck driver was withdrawn.

The Present Appeal

[5] We deal first with questions (ii), (iii), (iv) and (vi) which are set out:

(ii) Whether pursuant to the special agreement (together with its annexures), a Malaysian insurer is liable to satisfy a judgment obtained by a victim of an accident involving a Malaysian registered vehicle in Singapore, even though the motor insurance policy issued by the Malaysian insurer does not cover passenger liability?

A (iii) If question (ii) is answered in the affirmative, whether under the special agreement (together with its annexures), the Malaysian insurer is entitled to seek indemnity against the authorised driver of the Malaysian registered vehicle that was involved in the accident in Singapore?

B (iv) Whether the word "you" in para. 2 under the sub-heading "Avoidance Of Certain Terms And Rights Of Recovery" of section B of the motor insurance policy includes an "authorised driver" of the vehicle, or only applies to the policyholder and/or insured as named in the motor insurance policy?

C (vi) Whether evidence of "detriment" is necessary before the doctrine of estoppel can be invoked to estop the insurer from denying or repudiating its liability under the insurance policy, in view of the decision by the Malaysian Federal Court in *Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd* [1995] 4 CLJ 283; [1995] 3 MLJ 331?

D **[6]** To determine the questions of law posed, before dealing with the special agreement together with the annexures, one must begin with the insurance policy between the insured Sharul and the respondent which governs the contractual relationship between them. It is not in dispute that the said policy does not cover passenger liability. The Federal Court in the case of *New Zealand Insurance Co Ltd v. Sinnadorai* [1969] 1 LNS 119; [1969] 1 MLJ 183 in particular the judgment of Ong Hock Thye CJ (as he then was) at p. 185 para. D left – hand column to para. I right-hand column, opined:

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> As section 80(1) refers specifically to "judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of sub-section (1) of section 75 of this Ordinance (being a liability covered by the terms of the policy)" the provisions of such section necessarily assume first importance as a touchstone. The relevant portions of section 75 read as follows:
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> > In plain language this means that insurance cover is compulsory in respect of (a) all third parties other than passengers carried in the insured's vehicle and (b) passengers carried by the insured, either for hire or reward, that is to say, in public service vehicles, or by reason or in pursuance of a contract of employment. Passengers in private vehicles consequently do not come within the ambit of compulsory insurance. Up to this point there is no difference of opinion between counsel on both sides. The real conflict is on the interpretation of the bracketed words in section 80(1), "being a liability covered by the terms of the policy". Is such liability to be construed as synonymous and exegetical of "such liability as is required to be covered by a policy under paragraph (b) of sub-section (1) of section 75"?
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Counsel for the appellants contends for the affirmative answer on the ground that "being" means "it being the case of", so that only where third party cover is compulsory can the passenger avail himself of the provisions of sub-section (1) of section 80 to claim direct payment from the insurer. In other words, the passenger in a private vehicle (such as the respondent) is disentitled from relying on the statutory rights conferred by the sub-section on third parties generally, but has to seek his remedy, in the usual manner, through subrogation to the rights of the insured against the insurers. This, of course, has the effect of enabling the insurers to invoke the arbitration clause in the policy, which is binding on the insured and equally so on any injured third party "claiming through or under" the insured, so that a stay of proceedings may properly be sought under section 5 of the Arbitration Ordinance 1950.

On the other hand, counsel for the respondent submits, as stated in her notice of cross-appeal that:

> The learned judge should have held that if the insurance company does in fact issue a policy of insurance covering liability to passengers, although it may not be required to do so by virtue of proviso (ii) to section 75(1)(b) of the Road Traffic Ordinance, the third party, irrespective of whether he or she is a passenger or not, becomes entitled in his or her own right to recover from the insurers. If a liability is covered by the terms of the policy the plaintiff as a person entitled to the benefit of the judgment is entitled to sue the defendant.

On this view, it is clear that the bracketed words result in extending the liability of insurers to make direct payment to third parties, beyond the scope of compulsory insurance, so as to include all others covered, even voluntarily, under the terms of the policy. As I understand it, counsel's argument is that those words should be construed, not as words of limitation – because then they would be wholly superfluous – but so as to give them a sensible meaning: ut res magis valeat quam pereat. Insurers having full freedom of contract, it is argued that they may insure passengers or not as they please: accordingly, where passengers are covered by the terms of the policy, there should be no valid reason why passengers voluntarily covered should be in a worse position than other passengers as to whom insurers have no option in giving cover.

This argument is attractive and almost irresistible. However, I am unable to read the word "being" as meaning "or" so as to extend the scope of the insurers' liability. The power to do so rests only with Parliament. The construction contended for, moreover, obliterates the distinction between the two broad categories of passengers in public service and private vehicles. In the result, proviso (ii) to section 75(1)(b) would be rendered nugatory, which fortifies my opinion that the respondent cannot avail herself of the provisions of section 80(1). This does not necessarily mean that the respondent, being compelled to proceed by way of subrogation, cannot achieve her ends. There is only the risk that defences valid against the insured may defeat

A her claim, although in the instant case I doubt whether an alleged breach of condition 3 of the policy by the insured will be sustainable. An insured who died in the accident can hardly be expected to "take all reasonable steps to safeguard the vehicle from loss or damage" or to see that the damaged vehicle was not left unattended and exposed to further risks. (emphasis added)

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[7] It is clear that passenger risk for Zuraini is excluded in this case. With amendments to the law in Singapore in the 1980s, which now requires compulsory cover for passengers, and with the voluminous flow of traffic between Malaysia and Singapore and the dichotomy of positions between Malaysia and Singapore with regards to the compulsory coverage for
C passengers risk, the insurance companies including the respondent came into a special arrangement with the Motor Insurers' Bureau of Singapore (MIB) to seemingly address this anomaly.

[8] It was an attempt by insurance companies to financially and morally
D as responsible corporate citizens to perform a crucial function in coming to arrangements to satisfy judgments obtained by victims where there was no effective insurance cover as in our instant case. The rights and obligations of the respondent under this special agreement are between the respondent and Singapore Motor Insurers' Bureau and not with the insured *per se*. The
E specific agreement and its annexures are found in ("ikatan teras dokumen" vol 2, p. 182).

[9] We refer particularly to cls. 3, 4 and 5 of the same which clearly set out the scheme of how the special agreement works. The rights of the appellant lie against the Singapore MIB, if the consent judgment is not
F satisfied, then the Singapore MIB would satisfy the same and claim an indemnity from the respondent. In our view, the terms of the special agreement did not incorporate itself into the contract of insurance but remains a special arrangement between the respondent and the Singapore MIB. We now set out in its entirety cl. 3 of the special agreement.

G (3) (1) If a Judgment is obtained in Singapore against any person (hereinafter referred to as the "Judgment Debtor") *In respect of liability required to be insured by the Compulsory Insurance Legislation the Insurer Concerned will satisfy the Original Judgment Creditor if and to the extent that the Judgment has not been satisfied by the Judgment Debtor within twenty-eight days from the date upon which the person in whose favour it was given is entitled to enforce it.*
H (emphasis added)

[10] We refer to the decision of the Singapore High Court in *Pacific & Orient Insurance Co Bhd v. Motor Insurers' Bureau of Singapore* [2013] 1 SLR 341 which was relied quite substantially by the appellant. This case must be looked at in the context of legislation that makes it compulsory for passenger
I cover. In our view, the propositions of law in this case with regards to the

special agreement and its clauses incorporating itself into the contract of insurance is the position in Singapore whilst the position of law in Malaysia remains that the contract of insurance is the binding document between the parties. Further, the operation of cl. 3 of the special agreement, clearly envisages that the obligation is for Singapore MIB to settle the consent judgment 28 days after the consent judgment had become enforceable. Therefore, the special agreement remains in essence an arrangement for enforceability of an unsatisfied judgment against the insurance company in a situation where the contract of insurance does not provide cover as in our instant case. This is clearly amplified by cl. 5 of the special agreement which we now set out:

> 5. If in Singapore a Judgment is obtained against any person in respect of a liability required to be insured by the Compulsory Insurance Legislation and none of the Insurers is liable to satisfy the same under Clause 3 hereof the Bureau will after the expiry of twenty-eight days from the date upon which the Original Judgment Creditor became entitled to enforce such Judgment against the Judgment Debtor itself satisfy the same.

[11] To encapsulate, Zuraini would be unable to enforce the consent judgment she has obtained against the respondent as the policy issued does not include, cover for passenger liability and no liability would ensue. The extent to which an insurer under a motor insurance policy would be liable under the said policy was considered by the Privy Council when hearing an appeal from Malaysia in *Bankers and Traders Insurance Company v. National Insurance Company Ltd* [1985] 1 WLR 734 wherein their Lordships decided that an insurer could not be rendered liable in law for a liability which he had not agreed to insure under the terms of the policy. If the liability was expressly excluded by the terms of the policy, the insurers were not liable. This proposition was adopted in the case of *Tan Chik Ibrahim v. Safety Life & General Insurance Sdn Bhd* [1986] 2 CLJ 428; [1986] CLJ (Rep) 263; [1987] 1 MLJ 217 and we refer to the judgment of CJ Borneo Lee Hin Hoe (as he then was) at p. 267 para f (CLJ); p. 220 paras. A to C (MLJ) right-hand column refers and we quote and agree:

> In our view, the word "liability" used in section 80(1) of the Ordinance means "liability covered by the term of the policy". *Moreover, the right of the third party to enforce a judgment given against an insured person is a right given to him by statute and not under the common law. As such the right of the third party is subject to the terms and conditions of the insurance policy.* (See *Austin v. Zurich General Accident and Liability Insurance Co. Ltd*) and the relevant provisions of the statute, *viz*. section 80 of the Ordinance). It is also important that section 80 of the Ordinance should be interpreted subject to section 10(1) and (2) of the Civil Law Act, 1956 in order to bring it in harmony with the development of the law. (emphasis added)

A **[12]** As such, Zuraini's only recourse is to rely on the special agreement and its terms ie, the agreement between the respective insurance companies including the respondent and the Singapore Motor Insurers Bureau and in particular cl. 5. There was no question of the special agreement being interposed into the contract of insurance and to find otherwise would also
B mean imposing liabilities on the respondent where no premiums were paid for by the insured. We are therefore of the view that the Court of Appeal had committed no appealable error and we agree with their findings.

[13] On the upshot, we would answer question (ii) in the negative. In the light of the above, we do not need to deal specifically with the rest of the
C questions posed. As to question (vi) as that involves findings of fact as the question of law is a settled one, we decline to answer the same. The appeal is dismissed with costs of RM20,000 to the respondent subject to allocatur and the order of the Court of Appeal is affirmed. Deposit to be refunded to the appellant.

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